

EXHIBIT A

Approved, SCAO

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN		CASE NO.	
27th	JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	19- -CK 13015
Court address 100 S. State St., Hart, MI 49420		Court telephone no. 231- 873-3977	
Plaintiff's name(s), address(es), and telephone no(s). Hart Freeze Pack, LLC, d/b/a Michigan Freeze Pack Co. 835 S. Griswold St., PO Box 30 Hart, MI 49420		Defendant's name(s), address(es), and telephone no(s). Jag Food Sales, Inc. 31111 Big River Ct. Coarsegold, CA 93614	
Plaintiff's attorney, bar no., address, and telephone no. Mark A. Pehrson (P30881) 201 S. James St. Ludington, MI 49431-2103 (231) 843-3709		v	

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☒ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court and serve a copy on the other party or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 7-23-2019	Expiration date 10-22-2019	Court clerk C. J. [Signature]
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This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

rec'd 8/19/19

SUMMONS

Case No. 19-

-CK

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with

List all documents served with the summons and complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Signature: _____
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____
 Attachments

on _____
 Day, date, time

on behalf of _____

Signature

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OCEANA

Hart Freeze Pack, LLC, d/b/a
Michigan Freeze Pack Co.
Plaintiff

v

Jag Food Sales, Inc.
Defendant

Case No: 19-13675-CK
Hon. ASSIGNED TO JUDGE
ROBERT D. SPRINGSTEAD

Mark A. Pehrson (P30881)
Mark A. Pehrson, PC
Attorney for Plaintiff
201 S. James Street
Ludington, MI 49431-2103
Phone: (231) 843-3709

COMPLAINT

There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in the complaint,

NOW COMES, Plaintiff, Hart Freeze Pack, LLC, d/b/a Michigan Freeze Pack Co.,
("MFP"), by and through its attorney, Mark A. Pehrson, and for its complaint against Jag Food
Sales, Inc., a California corporation, states as follows:

1. Michigan Freeze Pack Co., ("MFP") is an assumed name registered to Hart Freeze Pack, LLC, a limited liability company organized under the laws of the State of Michigan, having its principal place of business in Oceana County, Michigan.
2. MFP is engaged in the purchase, processing and sale of vegetables.
3. Jag Food Sales, Inc., ("Jag") is a California corporation organized under the laws of the State of California.

Complaint

Case No. 19-

-CK

4. Jag is engaged in the purchase and sale of, among other things, vegetables, including carrots.
5. Jag periodically purchases agricultural products to be processed, packaged under its proprietary label "Five Star Foods", and stored until shipped by the food processor to customers of Jag.
6. Jag transacted business in Oceana County, Michigan by issuing an order for the processing, packaging and storage of carrots in Oceana County.
7. On June 3, 2017, Jag submitted a purchase order to MFP for the purchase of 972,000 pounds of carrots. The contract was in writing and a copy is attached as Exhibit A.
8. MFP accepted Jag's contract and thereafter began purchasing and processing carrots to fulfill Jag's order.
9. On October 11, 2017, Jag issued a confirmation of its existing order and specified that deliveries were to commence. The October 11, 2017 order is attaching as Exhibit B.
10. Deliveries under the contract were made in October and November, 2017 totaling 117,000 pounds which were invoiced by MFP to Jag and paid as per the contract.
11. On February 2, 2018, JAG sent an email to MFP seeking to amend the existing contract by reducing the quantity of carrots by one-half and seeking consent to the revised contract. A copy of the email is attached as Exhibit C.
12. On February 6, 2018, Jag sent an email to MFP indicating that they were "canceling" the contract. The email dated February 6, 2018 is attached as Exhibit D.
13. As of the date of the attempted cancellation, Jag was obligated to purchase 826,000 pounds of carrots at the price of \$0.27 per pound, for a total purchase commitment of \$223,020.

Complaint

Case No. 19-

-CK

14. In light of the repudiation of its commitment to complete the purchase of the remaining carrots by Jag, MFP determined to mitigate its damages by finding another buyer for the carrots.
15. On March 8, 2018, jag communicated a demand to MFP that it re-package and re-label the carrots and threatened litigation if MFP permitted the carrots to be shipped in the packaging using the Five Star Foods label that was originally specified. See the email attached as exhibit E.
16. As a result of Jag's demands, MFP was required to re-package the carrots at considerable expense.
17. Jag's failure to purchase the carrots as contracted and its insistence that the carrots be re-packaged and re-labeled before sale, required MFP to incur additional storage expenses for the frozen product.
18. On May 8, 2018, MFP, acting in good faith and in a commercially reasonable manner, sold the re-packaged carrots to a second customer at a substantial loss.

COUNT 1

- 19 MFP incorporates by reference the allegations of Paragraphs 1 through 18 above as if fully rewritten herein.
- 20 Jag's June 3, 2017 Purchase Order was a valid contractual offer accepted by MFP.
- 21 Jag's Purchase Order specified a specific cut of carrots and specified the use of specific packaging materials identifying the purchaser utilizing trademarks and other registered identifying marks which rendered the order a special order item.

Complaint

Case No. 19-

-CK

- 22 In reliance upon the contract formed by the offer and acceptance, MFP procured, processed, packaged and shipped carrots, which Jag accepted, and which Jag paid for at the agreed contract price as to a portion of the contract.
- 23 Jag's subsequent refusal to accept the balance of the purchased material was a repudiation of the June 3, 2017 contract.
- 24 As a result of that breach of contract, MFP has lost the benefit of its bargain and is entitled to damages as follows:

Losses on Sale	\$ 20,652.50
Repacking / Reprocessing Costs	\$ 27,190.80
Storage Costs from Delay	\$ 65,671.00
TOTAL	\$113,514.30

WHEREFORE, Plaintiff is entitled to relief by judgement as follows:

- A. The determination of the validity of the contract between MFP and Jag
- B. MFP's remedies under the Uniform Commercial Code, to include recovery from Jag of the difference between the contract price and the price obtained by MFP in a commercially reasonable sale of the balance of the contract carrots, as well as the costs associated with storage and re-packaging the product that was left to be delivered.
- C. Prejudgment interest, the costs of this action and reasonable attorney fees
- D. Such other and additional relief in either law or equity as the Court may deem appropriate.

Respectfully submitted,

Date: July 22, 2019



Mark A. Pehrson (P30881)
Attorney for Plaintiff

EXHIBIT A



JAG FOOD SALES, INC.

Pricing/Contract/Booking Form

Date: 6/3/2017

Mike Hawthorne: 559-658-2060

Fax: 559-658-8437

JAG@STI.NET

Contract No: 3569

Pricing for: Jag Food Sales, Inc. customers TBD at later date

Seller: Michigan Freezepack - Hart, MI

Quote Through: 06/01/17 to 03/01/18

Terms: net 30 days

Volume	Pack	Product	Label	Price
TBD by case size	1/30# or 1/20#	3/8" Diced carrots B grade Product of USA Master contract# 3569	Five Star Foods Code# 0113776CAR	\$.27 cts/lb.
				FOB Hart, MI

972,000 lbs.
24 loadsClean up on all by 03/01/18
add \$.01 cts/lb. for storage
beginning 03/01/17

Shipments begin approx. 09/18/17

See attached label print spec.
\$8.00 per pallet not exchanged

Signed: _____

☒ APPROVED

Date: _____

06/01/17

Notes

FOB: MFP - Hart, MI

3% brokerage paid to Jag Food Sales, Inc.

EXHIBIT B



JAG FOOD SALES, INC.

Pricing/Contract/Booking Form

Date: 10/11/2017

Mike Hawthorne: 559-658-2060

Fax: 559-658-8437

JAG@STI.NET

Contract No: 3569
 Pricing for: Jag Food Sales, Inc. customers TBD at later date
 Seller: Michigan Freezepack - Hart, MI
 Quote Through: 08/17/17 to 04/01/18 Terms: net 30 days

Volume	Pack	Product	Label	Price
	1/20#	3/8" Diced carrots B grade Product of USA Master contract# 3569	Five Star Foods Code# 0113776CAR2	\$.27 cts/lb.
				FOB Hart, MI

972,000 lbs.
24 loads

Clean up on all by 04/01/18
 add \$.01 cts./lb. for storage
 beginning 04/01/18

Shipments begin approx. 09/18/17

REVISED

See attached label print spec.
 \$8.00 per pallet not exchanged

4,400 cs. available right now at this
level.

Signed: J. W.

Date: 10-11-17

Notes

FOB: MFP - Hart, MI
 3% brokerage paid to Jag Food Sales, Inc.

Michigan Freeze Pack Co.
PO Box 30
Hart, MI 49420

INVOICE

Invoice No. 004351 001
Invoice Date NOV-14-17



INVOICE TO

Southern Foods
PO Box 2158
Little Rock, AR 72203

Our Order Number SO004115
Customer Account Number C0363
Customer Order Number SFS56015
Despatch Date NOV-13-17
Payment Due Date NOV-29-17
Terms Net 15

DISPATCH TO

Commercial Warehousing Inc.
Southern Food Systems
102 Industrial Blvd.
Winter Haven, FL 33880

Page 1 of 1

Line No	Product Code	Description	Despatched Quantity	Price USD	Net Value	Tax Rate
001	CAR0010020128	Five Star 20# IQF 3/8" Diced Carrots	40000	0.2700	10800.0000	0.00
		Pallet Charge		224.0000	224.0000	
<p>The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payments received.</p>				Net Goods Value	11024.0000	
				Tax.....	0.0000	
				Total Sale.....	11024.0000	

Michigan Freeze Pack Co.
PO Box 30
Hart, MI 49420

INVOICE

Invoice No. 004202 001
Invoice Date OCT-19-17



INVOICE TO

Southern Foods
PO Box 2158
Little Rock, AR 72203

Our Order Number SO004042
Customer Account Number C0363
Customer Order Number SFS56013
Despatch Date OCT-16-17
Payment Due Date NOV-03-17
Terms Net 15

DISPATCH TO

Commercial Warehousing Inc.
Southern Food Systems
102 Industrial Blvd.
Winter Haven, FL 33880

Page 1 of 1

Line No	Product Code	Description	Despatched Quantity	Price USD	Net Value	Tax Rate
001	CAR0010020128	Five Star 20# IQF 3/8" Diced Carrots	37220	0.2700	10049.4000	0.00
		Pallet Charge		208.0000	208.0000	
<p>The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payments received.</p>				Net Goods Value	10257.4000	
				Tax	0.0000	
				Total Sale	10257.4000	

Michigan Freeze Pack Co.
PO Box 30
Hart, MI 49420

INVOICE

Invoice No. 004299 001
Invoice Date NOV-06-17



INVOICE TO

Southern Foods
PO Box 2158
Little Rock, AR 72203

Our Order Number SO004095
Customer Account Number C0363
Customer Order Number SPS56014
Despatch Date NOV-03-17
Payment Due Date NOV-21-17
Terms Net 15

DISPATCH TO

Commercial Warehousing Inc.
Southern Food Systems
102 Industrial Blvd.
Winter Haven, FL 33880

Page 1 of 1

Line No	Product Code	Description	Despatched Quantity	Price USD	Net Value	Tax Rate
001	CAR0010020128	Five Star 20# IQF 3/8" Diced Carrots	10000	0.2700	10800.0000	0.00
		Pallet Charge		224.0000	224.0000	
<p>The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a Trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payments received.</p>				Net Goods Value	11024.0000	
				Tax.....	0.0000	
				Total Sale.....	11024.0000	

EXHIBIT C

Amy Mathews

From: Jag3@sti.net
Sent: Friday, February 02, 2018 1:10 PM
To: Amy Mathews
Cc: Mike Hawthorne; Tamie Taylor
Subject: Re: Five Star Carrots
Attachments: Scan_0270.pdf

Amy,

Mike is telling me that there is a bit of a problem. This is a competitive situation where our competitors are offering carrots at a cheaper price. We have lost a couple major accounts and would like to cut our contract in half. Please see attached revised contract and advise if this is possible.

Thank You.

Nathan Hawthorne
Jag Food Sales, Inc. – Sales
559-658-2060 office / 559-658-8437 fax
email: jag3@sti.net / website: www.Jagfoodsales.com

From: Amy Mathews
Sent: Friday, February 02, 2018 8:45 AM
To: Jag3@sti.net
Subject: Five Star Carrots

Hi there,

Hope all is well!

Wendy just informed me that we still have a considerable amount of carrots for Five Star.

Is there an issue with this contract?



JAG FOOD SALES, INC.

Pricing/Contract/Booking Form

Date: 10/11/2017

Mike Hawthorne: 559-658-2060

Fax: 559-658-8437

JAG@STI.NET

Contract No: 3569

Pricing for: Jag Food Sales, Inc. customers TBD at later date

Seller: Michigan Freezepack - Hart, MI

Quote Through: 08/17/17 to 04/01/18 Terms: net 30 days

Volume	Pack	Product	Label	Price
	1/20#	3/8" Diced carrots B grade Product of USA Master contract# 3569	Five Star Foods Code# 0113776CAR2	\$.27 cts/lb.
				FCB Hart, MI

486,000 lbs. ←
12 loads ←

Clean up on all by 04/01/18
add \$.01 cts./lb. for storage
beginning 04/01/18

Shipments begin approx. 09/18/17

See attached label print spec.
\$2.96 per pallet not exchanged

4,400 cs. available right now at this
level

Signed: 

Date: 08/17/17

REVISED
Qty 

Notes

FOB: MFP - Hart, MI

3% brokerage paid to Jag Food Sales, Inc.

EXHIBIT D

From: Mike Hawthorne (mailto:jag@sti.net)
Sent: Tuesday, February 06, 2018 4:05 PM
To: Amy Mathews <AMathews@michiganfreezeback.com>
Cc: Kirk Utemark <kutemark@michiganfreezeback.com>; Jag3@sti.net; 'JAG Food's - Customer Service' <jag2@sti.net>
Subject: AFFI 2018 Meetings
Importance: High

Amy,

You should be a little more careful on who you copy when sending interoffice emails like the one below in red. Jag Food Sales, Inc. is a broker not a buyer and the booking we sent you earlier was in behalf of the customers we supply product like the carrots you offered. With that I shared this email with all of them and unanimously they are all offended like I am with your comments.

Since you are "Not too excited in spending your valuable time with us" we are not too excited in selling your products to our customers. With that said we are cancelling the remainder of our booking #3589 with Michigan Freeze Pack on the 1/20# diced carrots you offered Jag Food Sales' and their customers. We move 7.5 million pounds of carrots a year through our program and you can consider MFP not to be a supplier to our program any longer.

Tamie send a canceled booking form #3589 to Amy at MFP right away and remove them from our list of needs.

2/6/2018



JAG FOOD SALES, INC.

Pricing/Contract/Booking Form

Date: 10/11/2017

Mike Hawthorne: 559-658-2060

Fax: 559-658-8437

JAG@STI.NET

Contract No: 3569

Pricing for: Jag Food Sales, Inc. customers TBD at later date

Seller: Michigan Freezepak - Hart, MI

Quote Through: CANCEL

Terms: net 30 days

Volume	Pack	Product	Label	Price
	1/20#	3/8" Diced carrots B grade Product of USA Master contract# 3569	Five Star Foods Code# 0113776CAR2	\$.27 cts/lb.
				FOB Hart, MI

486,000 lbs.
12 loads~~Clean up on all by 04/01/18~~~~add \$.01 cts./lb. for storage~~~~beginning 04/01/18~~~~Shipments begin approx. 09/18/17~~~~See attached label print spec.~~~~\$8.00 per pallet not exchanged~~CANCEL BOOKING

Signed: _____

Date: 09/06/18

Notes

FOB: MFP - Hart, MI

~~3% brokerage paid to Jag Food Sales, Inc.~~

EXHIBIT E

From: Mike Hawthorne <jag@sti.net>

Sent: Tuesday, March 20, 2018 4:19 PM

To: john@foodservicesystems.com

Cc: Amy Mathews <AMathews@michiganfreezepak.com>; Kirk Utemark <kutemark@michiganfreezepak.com>; jag3@sti.net; 'JAG Food's - Customer Service' <jag2@sti.net>; bill@foodservicesystems.com

Subject: Five Star Foods branded products

Importance: High

John Pengelly,

It has come to my attention from several reliable sources that Food Service Systems has or is marketing a 1/20# Five Star Foods brand Diced Carrots packed by Michigan Freeze Pack out of Hart Michigan. The Five Star Foods label is a registered brand and owned by Jag Food Sales, Inc. Before we file a complaint with PACA I am requesting that this practice be stopped. The supplier (MFP) or Food Services Systems needs to re-label the product in question and immediately stop selling or shipping any products to your customers under the Five Star Foods Brand.

Please let this be your notice to cease and desist the sale of any Five Star Foods branded products. This includes but is not limited to any pending sales or any orders placed but not shipped now and in the future.

